

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

BRIAN A. CAMPBELL,

Plaintiff,

v.

CASE NO. 18-3096-SAC

R.S. SAGE, et al.,

Defendants.

ORDER

Plaintiff, Brian A. Campbell, is an inmate at the Sedgwick County Jail in Wichita, Kansas. Plaintiff filed this *pro se* § 1983 action alleging his constitutional rights were violated by officers of the Augusta, Kansas Police Department. He claimed officers conducted an illegal search and seizure of property, leading to further investigation of Plaintiff and his arrest.

On October 5, 2018, Mr. Campbell submitted a motion titled “Motion to Withdraw” asking the Court to dismiss the instant action without prejudice (ECF No. 11). The Court must construe liberally the October 5 motion because Mr. Freeman submitted the motion on his own behalf. *See Haines v. Kerner*, 404 U.S. 519, 520–21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Therefore, the Court construes the October 5 motion liberally as a notice of voluntary dismissal pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

Rule 41(a)(1) provides that “the plaintiff may dismiss an action without a court order by filing (i) a notice of dismissal before the opposing party serves either an answer or a motion for

summary judgment.” No response has been filed by the defendant in this action. A voluntary dismissal pursuant to Rule 41(a)(1) is effective immediately upon the filing of a written notice of dismissal, and no subsequent court order is necessary. *See Hyde Constr. Co. v. Koehring Co.*, 388 F.2d 501, 507 (10th Cir. 1968). The notice closes the file. *See id.*

IT IS THEREFORE BY THE COURT ORDERED that the motion filed by Plaintiff on October 5, 2018 (ECF No. 11), is **granted** and is construed as a notice of voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(1).

IT IS FURTHER ORDERED that the voluntary dismissal is effective as of October 5, 2018, the date the liberally construed notice of dismissal was filed in this action.

IT IS FURTHER ORDERED that this action is **dismissed without prejudice**.

IT IS SO ORDERED.

DATED: This 14th day of November, 2018, at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge